Editor's note: Reconsideration denied in part, granted in part; case remanded in part by Order dated Feb. 25, 1983 -- See 70 IBLA 4A and B below.

GEORGE M. WILKINSON

IBLA 81-786 Decided January 6, 1983

Appeal from decision of the Colorado State Office, Bureau of Land Management, rejecting geothermal steam lease applications C-29556, C-30195, C-30775, and C-30777.

Affirmed.

1. Geothermal Leases: Applications: Generally

A geothermal lease application is properly rejected where the applicant submits a proposed plan of operations which includes the building of homes and the development of mining claims on the geothermal lease site, if a lease is issued.

APPEARANCES: George M. "Wilk" Wilkinson, pro se.

OPINION BY ADMINISTRATIVE JUDGE FRAZIER

This appeal is taken from two decisions dated May 19, 1981, of the Colorado State Office, Bureau of Land Management (BLM), rejecting applications for geothermal steam leases, C-29556, C-30195, C-30775, and C-30777.

The decisions state that each application included a proposal for constructing a dwelling structure for use of the owner and employees and that such proposal must be excluded from the applications. The decisions also mention that appellant, in his plan of operations, included a proposal to develop certain mining claims, and that mining claims could not be considered under the Geothermal Steam Act of 1970, 30 U.S.C. § 1001 (1976). The decision covering C-29556, C-30775, and C-30777 gave appellant a period of 90 days to resubmit a plan of operations which excluded reference to dwelling structures and development of mining claims. Appellant did not comply, and the decision became final. The decision in C-30195 rejected that application for the additional reason that appellant had submitted three copies of his application, none of which was an "originally signed copy."

The applications are on form 3200-8 (December 1973) (Application to Lease Geothermal Resources). Appellant attached a proposal to develop the unpatented Gold Chance Nos. 1 and 2 mining claims to the application in C-30775. All four files contain proposed plans of operation which speak of solar and geothermal residences for the owner and employees. The file in C-29556 gives the area in square feet of the proposed residences. Application

C-30195 makes mention of the Jaya, Tulasi, and Wilk unpatented mineral claims, and the operation plan refers to the exploration of the mineral estate. Appellant submitted one original application on appeal stating that he had initially filed it with the county recorder's office.

In his statement of reasons appellant asserts that dwelling structures for owner and staff are integral to a successful geothermal steam operation. Appellant refers to form 3200-21 (May 1974) (Geothermal Resources Lease) in section 1(b) of which the lessor grants

> (b) The right to construct or erect and to use, operate, and maintain within the leased area, together with ingress and egress thereupon all wells, pumps, pipes, pipelines, buildings, plants, sumps, brine pits, reservoirs, tanks, waterworks, pumping stations, roads, electric power generating plants, transmission lines, industrial facilities, electric, telegraph or telephone lines, and such other works and structures and to use so much of the surface of the land as may be necessary or reasonably convenient for the production, utilization, and processing of geothermal resources or to the full enjoyment of the rights granted by this lease, subject to compliance with applicable laws and regulations; Provided that, although the use of the leased area for an electric power generating plant or transmission facilities or a commercial or industrial facility is authorized hereunder, the location of such facilities and the terms of occupancy therefor shall be under separate instruments issued under any applicable laws and regulations. [Emphasis in original.]

Appellant contends that construction of dwellings are within the ambit of this provision.

Appellant also contends on appeal, that a geothermal lease may issue which reflects his ownership of the mining claims in the area sought. To support this position he points to section 1(d) of the lease form which provides:

> (d) The right to convert this lease to a mineral lease under the Mineral Leasing Act of February 25, 1920, as amended, and supplemented (30 U.S.C. 181-287) or under the Mineral Leasing Act for Acquired Lands (30 U.S.C. 351-359), whichever is appropriate, if the leasehold is primarily valuable for the production of one or more valuable by-products which are leasable under those statutes, and the lease is incapable of commercial production or utilization of geothermal steam: Provided that, an application is made therefor prior to the expiration of the lease extension by reason of by-product production as hereinafter provided, and subject to all the terms and conditions of said appropriate Acts. The Lessee is also granted the right to locate mineral deposits under the mining laws (30 U.S.C. 21-54), which would constitute by-products if commercial production or utilization of geothermal steam continued, but such a location to be valid must be completed within ninety (90) days after the termination of this lease. Any conversion of this lease to a mineral lease or a mining claim is contingent on the availability of such

> lands for this purpose at the time of the conversion. If the lands are withdrawn or acquired in aid of a function of any Federal Department or agency, the mineral lease or mining claim shall be subject to such additional terms and conditions as may be prescribed by such Department or agency for the purpose of making operations thereon consistent with the purposes for which these lands are administered;

As to the decision in C-30195, appellant concedes that he submitted three copies of his application, none of which was an originally signed copy. As previously indicated, appellant submitted the original with his statement of reasons.

One of the applicable regulations, 43 CFR 3210.2-1, states that an application for a lease must contain a narrative statement setting forth the applicant's proposed plan and methods for diligent exploration. This regulation further provides that such a proposed plan need not necessarily be submitted with the application during the initial 30-day filing period.

Once a lease has been issued, the lessee is required to submit a plan of operation pursuant to 30 CFR 270.34. According to this regulation, such a plan must include, inter alia:

> (a) The proposed location of each well, including a layout showing the position of the mud tanks, reserve pits, cooling towers, pipe racks, and other surface facilities;
>
> (b) Existing and planned access and lateral roads;
>
> (c) Location and source of authorized water supply and road building material;
>
> (d) Location of camp sites, airstrips, and other support facilities.

The reference in 30 CFR 270.34(d) to "camp sites" is the nearest the regulations come to covering the subject of dwelling facilities on geothermal lease sites. Campsites are provisional quarters which may be necessary to temporarily house crews and staff associated with lease operations. We find no basis in the Act or regulations allowing the erection of permanent homes as adjuncts to lease operations. Nor does section 1(b) of form 3200-21 (May 1974) support such a view. The intent of the Act is to make possible the production, utilization, and processing of geothermal resources, not the granting of permanent homesites.

With respect to the mining claims, appellant maintains his mineral interest can be added to any geothermal lease issued. If, as appellant indicates, the claims were properly recorded with BLM as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976) and the implementing regulations found at 43 CFR 3833.2-1, BLM is aware of his mineral interest in the area. Compliance with FLPMA is the only avenue available to appellant to have these mining claims recognized. While BLM may issue a lease for geothermal resources in land where mining claims are located, the lease and the claims represent

distinct interest in Federal land as defined in applicable statutes. These interests will not merge where one individual holds both interests. Thus no geothermal lease would issue reflecting a mineral interest in Federal land unrelated to geothermal resources.

The Geothermal Steam Act of 1970 permits conversion of mining claims to geothermal steam lease applications and leases provided several requirements are met: The claims must have been located on or before September 7, 1965, and an application for conversion must have been filed within 180 days following December 24, 1970. 30 U.S.C. § 1003 (1976). Appellant's claims were located in 1979 and 1980, thus he has no right to convert the mining claims to a geothermal lease. The other conversion provision relates to the discovery of by-product minerals either leasable under the Mineral Leasing Act of 1920 or locatable under the general mining laws, pursuant to operations under a geothermal lease. These provisions are simply not relevant to mining claims located prior to lease issuance.

We conclude that insofar as BLM rejected the applications because of the dwelling house and mining claims issues, the rejections were proper. 1/

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

Gail M. Frazier
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

1/ BLM cites no authority for rejecting C-30195 for the additional reason that no "originally signed copy" of the application was filed. 43 CFR 3210.2-1 provides in part as follows:

"An application for a lease must be filed on a form approved by the Director in the proper BLM office in duplicate for public lands and in triplicate where acquired lands are involved. The application must be submitted in a sealed envelope marked 'Application for lease pursuant to 43 CFR Part 3210'. An application will be considered filed when it is received in the proper office during business hours." Since the regulation does not require an originally signed copy, we find rejection for this reason invalid. Our finding, however, does not affect the result herein.

February 25, 1983

IBLA 81-786	:	C 29556, 30195, 30775, 30777
GEORGE M. WILKINSON	:	Geothermal Leases Applications
	:	Petition for Reconsideration
	:	Denied in Part, and Granted in
	:	Part; Case remanded in Part

ORDER

George M. "Wilk" Wilkinson has petitioned the Board for reconsideration of George M. Wilkinson, 70 IBLA 1, (1983) which affirmed decisions of the Colorado State Office, Bureau of Land Management, rejecting his applications for geothermal steam leases. In those decisions, BLM advised appellant that his applications would be rejected if he did not resubmit a plan of operations for each application, which excluded reference that the construction of dwelling structures within 90 days. Appellant did not comply, and filed an appeal.

In his petition for reconsideration he contends that the BLM decision was not final, and that he should have 90 days to submit revised applications consistent with the decision in George M. Wilkinson, supra. He also argues as he did in his statement of reasons considered on appeal that the construction of dwelling structures is contemplated under the regulations.

The issue of whether the construction of dwellings may be included in a geothermal lease application was disposed of in George M. Wilkinson, supra. A petition for reconsideration may be granted only in extraordinary circumstances. 43 CFR 4.21(c). The circumstances herein so not warrant reconsideration of this issue and the petition for such is denied.

As to appellant's contention that he should be afforded the full 90 days in which to comply with BLM's decision of May 19, 1981, we agree. In our recent opinion in Carl Gerard, 70 IBLA 343 (1983), we noted that where BLM rejects an application as a present fact the decision is ripe for appeal and the timely filing of a notice of appeal tolls the running of the time provided for compliance in accordance with our decision in Mobil Oil Corp., 35 IBLA 375, 85 I.D. 225 (1978). Thus, appellant is entitled to the full 90 days within which to submit his revised applications.

Therefore pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior 43 CFR 4.1 the petition for reconsideration is denied in part and granted in part and the case remanded in part to BLM for further consideration.

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Gail M. Frazier
Administrative Judge

We concur:

_____ _____
Edward W. Stuebing James L. Burski
Administrative Judge Administrative Judge

APPEARANCES:

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